

REMARKS

Claims 1-23 and 28-30 are pending in the application. Claims 9 and 22 remain objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

Claims 11-14 are rejected under 35 U.S.C. §102(b) as being anticipated by Proctor et al. (U.S. 5,440,542). Claims 1-4, 10 and 23 are rejected under 35 U.S.C. §103(a) as unpatentable over Proctor in view of Nagatani et al. (U.S. Patent 6,097,714). Claims 5, 7, 8 and 28 are rejected under 35 U.S.C. §103(a) as unpatentable over Proctor in view of Nagatani and further in view of Odenwalder et al. (U.S. Patent 5,909,434). Claims 15, 20, 21 and 29 are rejected under 35 U.S.C. §103(a) as unpatentable over Proctor in view of Odenwalder. Claims 16-18 are rejected under 35 U.S.C. §103(a) as unpatentable over Proctor in view of Examiner's Official Notice. Claims 19 and 30 are rejected under 35 U.S.C. §103(a) as unpatentable over Proctor in view of Examiner's Official Notice and further in view of Odenwalder.

It is initially noted that the claims of the present application relate to a device and method that generates various length frames and reduces the transmission time and duration time related to the transmission of the frames, and also reduces inherent delays in the transmission of short frames. In the prior art systems, a short frame is transmitted after a long frame has been transmitted, thus creating a problem in that the short frame cannot be transmitted until the long frame has been transmitted, which creates a time delay in the transmission of the short frame. The claims of the present application provide a device and method for reducing the duration of the time delay for the transmission of the short frame, thus resolving the problems of the prior art systems. Proctor teaches using equal length frames, and merely provides a method for transmitting frames based on a determined importance of the data being transmitted. That is, Proctor fails to solve the problem of reducing the time delay of a short frame.

Regarding the rejection of independent Claim 11 under §102(b), the Examiner alleges

that Proctor renders the claim unpatentable. Proctor discloses a method and apparatus for multiplexing control information into a user signal stream of a CDMA cellular system.

Claim 11 recites, in part, the encoding of input data into two frame messages. A first frame message has a first frame length, and a second frame message has a second frame length. The second frame length is longer than the first frame length. A portion of the second frame message is replaced with the first frame message, and then transmitted. The Examiner alleges that Proctor teaches these features.

Proctor teaches generating frames of control information and user data. The frames of Proctor are all of the same length, i.e. the temporal measure is always the same. Proctor simply replaces one frame with another frame.

The replacing of one frame with another frame of the same length of Proctor is not and cannot be equated with replacing a portion of a second frame message with a first frame message, the second frame message being longer than the first frame message of Claim 11 of the present application.

MPEP §2131 Anticipation, clearly states that to anticipate a claim, the reference must teach every element of the claim.

In addition, The United States Court of Appeals for the Federal Circuit recently held “that unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.” *Net Moneyin, Inc., v. Verisign, Inc.*, 545 F.3d 1359 (Fed. Cir. 2008).

Proctor does not teach every element of the claim and does not disclose within the four corners of the document all of the limitations claimed nor all of the limitations arranged or

combined in the same way as recited in the claim.

The Examiner has not met his initial burden of proof to establish a prima facie case for the §102(b) rejection.

Based on at least the foregoing, withdrawal of the rejection of Claim 11 under §102(b) is respectfully requested.

Regarding the rejection of independent Claim 1 under §103(a), the Examiner alleges that Proctor in view of Nagatani renders the claim unpatentable. Nagatani discloses a code multiplexing transmitting apparatus.

Claim 1 recites, in part, the encoding of input data into two frame messages. A first frame message has a first frame length, and a second frame message has a second frame length. The second frame length is longer than the first frame length. A portion of the second frame message is replaced with the first frame message, and then transmitted. The Examiner again alleges that Proctor teaches these features.

As stated above, Proctor teaches generating frames of control information and user data. The frames of Proctor are all of the same length, i.e. the temporal measure is always the same. Proctor simply replaces one frame with another frame.

The replacing of one frame with another frame of the same length of Proctor is not and cannot be equated with replacing a portion of a second frame message with a first frame message, the second frame message being longer than the first frame message of Claim 1 of the present application. Nagatani does not cure the defects of Proctor.

Based on at least the foregoing, withdrawal of the rejection of Claim 1 under §103(a) is

respectfully requested.

Independent Claims 1 and 11 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2-10, 12-23 and 28-30, these are likewise believed to be allowable by virtue of their dependence on their respective independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2-10, 12-23 and 28-30, is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-23 and 28-30, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

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